

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re)	Case No. 05-90426-A-13
)	
FRANCISCO J. ARRONA and)	Docket Control No. MET-1
CYNTHIA R. ARRONA,)	
)	Date: June 20, 2005
)	Time: 2:00 p.m.
Debtors.)	
)	

MEMORANDUM

The motion for relief from the automatic stay filed by American Honda Finance Corporation included a demand for attorney's fees. The vehicle lease between the movant's predecessor and the debtors includes an attorney's fee provision. While the court concluded at the hearing on June 20, 2005 that a similarly situated lessor would have filed a motion for relief from the automatic stay, insofar as attorney's fees were requested in the motion, the motion was deficient.

First, there was no evidence with the motion regarding the time and charges necessary to prosecute the motion. Without this evidence, as well as evidence regarding the rate at which the time of counsel should be compensated, the court had no factual basis for awarding fees.

1 Second, the motion concerned a vehicle leased to the debtor
2 by the movant. In other words, the movant is not a secured
3 creditor.

4 In ruling on a motion for relief from the automatic stay,
5 this court does not apply California contract law. Therefore,
6 California law on attorneys' fees is not applicable. Rather,
7 such a motion presents "issues peculiar to federal bankruptcy
8 law." Fobian v. Western Farm Credit Bank (In re Fobian), 951
9 F.2d 1149, 1153 (9th Cir. 1991). The recovery of fees for
10 services related to prosecuting a motion for relief from the
11 automatic stay is a matter of federal law. Id.; Collingwood
12 Grain, Inc. v. Coast Trading Co. (In re Coast Trading Co.), 744
13 F.2d 686, 693 (9th Cir. 1984).

14 Thus, the Bankruptcy Code must provide for the award of
15 fees. The only provision in the Bankruptcy Code that is remotely
16 applicable is 11 U.S.C. § 506(b). It, however, is applicable
17 only to a secured creditor, and for it to be applicable to
18 creditor holding a secured claim, that creditor must be over-
19 secured. Kord Enterprises II v. California Commerce Bank (In re
20 Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998); In re
21 Fobian, 951 F.2d at 1153; Johnson v. Righetti (In re Johnson),
22 756 F.2d 738, 740-41 (9th Cir. 1985).

23 In this case, however, the movant is not the holder of a
24 secured claim. It is a lessor. And, the court has been given no
25 authority (even though the movant was given the opportunity to
26 file a post-hearing brief on the issue) permitting the award of
27 fees to a lessor who has incurred fees bringing a motion for
28 relief from the automatic stay.

1 Therefore, a separate order denying the motion and the
2 requested fees will be entered.

3 Dated: *25 July 2005*

4 By the Court

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7 Michael S. McManus, Chief Judge
8 United States Bankruptcy Court
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CERTIFICATE OF MAILING

I, Carlene Walker, in the performance of my duties as Deputy Clerk to The Honorable Michael S. McManus, mailed by ordinary U.S. mail to each of the parties a true copy of the attached document to:

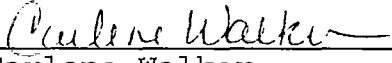
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Sacramento, CA 95814

Dated: July 26, 2005



Carlene Walker
Deputy Clerk to Judge McManus